

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUWA HERNANDEZ,

Defendant.

Case No. 18-cr-0233-PJH-1

**ORDER RE MOTION FOR
COMPASSIONATE RELEASE**

The court is in receipt of the motion for compassionate release filed by defense counsel David Rizk on behalf of defendant Joshuwa Hernandez, as well as the motion to expedite. As an initial matter, the court notes that defense counsel states that he met and conferred with government counsel on Monday, January 4, 2021 about the filing of these motions. Dkt. 66, ¶ 7. However, defense counsel waited until after 7pm on Friday, January 8, 2021 to file both motions, and does not offer any explanation for his delay. Moreover, the motion to expedite requested a deadline of noon on Monday, January 11, 2021 for the government to file a response – in other words, defense counsel proposed that government counsel have just half of a business day to respond. Because the motion to expedite did not adequately explain the need for urgency after defense counsel's own apparent delay, the motion to expedite is DENIED on the merits and also DENIED as moot, because the government did ultimately file its response on January 11.

As to the merits of defendant's motion for compassionate release, the court finds that the current record does not provide a sufficient basis for determining that defendant suffers from moderate to severe asthma, as opposed to mild asthma. There are no

1 records showing a diagnosis from a doctor, nor did defendant submit a declaration, under
2 penalty of perjury, attesting to the severity of his asthma.

3 Finally, the court notes that the U.S. Probation Office has not filed a response
4 regarding defendant's proposed release plan. The court directs the Probation Office to
5 file a response as soon as it is practicably able to do so. The court also directs defense
6 counsel to file a supplemental brief providing support for the contention that defendant
7 suffers from moderate to severe asthma.

8 **IT IS SO ORDERED.**

9 Dated: January 12, 2021

10 /s/ Phyllis J. Hamilton

11 PHYLLIS J. HAMILTON
12 United States District Judge
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